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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-fourth session

SUMMARY RECORD OF THE 580th MEETING

Held at the Vienna International Centre, Vienna,
on Monday, 27 March 1995, at 3 p.m.

Chairman: Mr. MIKULKA (Czech Republic)

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The meeting was called to order at 3.25 p.m.

OPENING OF THE SESSION

1. **The CHAIRMAN**, noting that the Subcommittee was meeting in the year of the fiftieth anniversary of the United Nations, said that, since its last session, many changes and developments in the world had had a direct impact on space activities. He was confident that the spirit of mutual accommodation and respect that had always guided the Subcommittee's work would remain unchanged, and that the current session would be productive.

PARTICIPATION BY NON-MEMBER STATES

2. **The CHAIRMAN** said that Algeria, the Libyan Arab Jamahiriya, Peru, Thailand and Tunisia had applied to participate in the work of the Subcommittee. As the granting of observer status was a prerogative of the Committee on the Peaceful Uses of Outer Space, he suggested that the Subcommittee should not adopt a formal decision on the matter, but that, if there was no objection, the representatives of those countries should attend the Subcommittee's formal meetings and, if they wished to make statements, seek permission from the Chair.

3. *It was so decided.*

PROGRAMME OF WORK AND ADOPTION OF THE AGENDA (A/AC.105/C.2/L.196)

4. **The CHAIRMAN** drew the Subcommittee's attention to General Assembly resolution 49/34 of 9 December 1994, which contained decisions by the General Assembly regarding the Subcommittee's current session, and particularly to paragraph 4. He also drew attention to the recommendation of the Committee on the Peaceful Uses of Outer Space, endorsed by the General Assembly in paragraph 8 of its resolution 49/34, that the Subcommittee should conduct extensive, open-ended informal consultations with all its members on the working methods and agenda of the Subcommittee, including the consideration of possible additional items for inclusion on the agenda. Finally, he drew attention to the provisional agenda (A/AC.105/C.2/L.196) prepared by the Secretariat on the basis of General Assembly resolution 49/34.

5. In response to a query by **Mr. de YTURRIAGA** (Spain), he noted that, although the General Assembly had recommended that the Subcommittee discuss its own working methods, no item on that subject had been included in the agenda. The issue would be taken up in informal consultations, and did not have the same status as did the substantive items formally referred to the Subcommittee by the General Assembly.

6. **Mr. de YTURRIAGA** (Spain) said he thought it would have been preferable to have included an item on working methods in the Subcommittee's agenda, but would accept the Chairman's explanation on the understanding that no obstacles would be placed in the way of an open-ended discussion of the subject, in accordance with General Assembly resolution 49/34.

7. **The CHAIRMAN** said that the Subcommittee's working methods would definitely be discussed in informal consultations.

8. If he heard no objection, he would take it that the Subcommittee wished to adopt the provisional agenda.

9. *It was so decided.*

ORGANIZATION OF WORK

10. **The CHAIRMAN** noted that, in accordance with the General Assembly's recommendations, open-ended working groups should be established on agenda item 4 ("Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union") and agenda item 5 ("Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries"). In resolution 49/34, the General Assembly had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee should suspend consideration in the relevant working group of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, without prejudice to the possibility of reconvening the working group if sufficient progress was made in the Scientific and Technical Subcommittee at its 1995 session to warrant such action. As indicated in the report on the thirty-second session of the Scientific and Technical Subcommittee, held from 6 to 16 February 1995 (A/AC.105/605), that Subcommittee considered that, at the present time, revision of the Principles was not warranted. He therefore suggested that the working group on agenda item 3 ("Question of early review and possible revision of the principles relevant to the use of nuclear power sources in outer space") should not be reconvened at the present session.

11. *It was so decided.*

12. **The CHAIRMAN** suggested that the Working Groups on agenda items 4 and 5 should be re-established.

13. *It was so decided.*

14. **The CHAIRMAN** said that Mr. Estanislao Zawels, of Argentina, who had chaired the Working Group on the Definition of Outer Space and Utilization of the Geostationary Orbit at previous sessions, was not available for the current year. He suggested that Mr. Eugenio María Curia, also of Argentina, should be elected Chairman of the Working Group.

15. *It was so decided.*

16. **The CHAIRMAN** said that, if there was no objection, he would take it that the Subcommittee wished to re-elect Mr. Raimundo González, of Chile, as Chairman of the Working Group on the Benefits of Outer Space.

17. *It was so decided.*

STATEMENT BY THE CHAIRMAN (A/AC.105/C.2/L.196)

18. **The CHAIRMAN** drew attention to the provisional schedule of meetings set out in document A/AC.105/C.2/L.196. The utilization of conference services was of great concern to the General Assembly owing to the high cost of such services and the current financial constraints faced by the Organization. For a number of years, the Subcommittee had maintained the required efficiency in that area. It had done so by adopting various measures, reflected in paragraph 12 of the report on its thirty-third session (A/AC.105/573).

19. The Subcommittee had agreed that an organization of work similar to that adopted at its thirty-third session should serve as a basis for organizing the work of its thirty-fourth session (A/AC.105/573, para. 15). That agreement had been endorsed by the Committee on the Peaceful Uses of Outer Space at its June 1994 session (A/49/20, para. 169). The Subcommittee had further agreed that, at its session in 1995, if the time provisionally allocated for the consideration of an item was not fully used or was unlikely to be fully used, it should seek, on the basis of consensus, to use the time for the consideration of other items, or envisage the possibility of concluding its session ahead of the scheduled date. That agreement was reflected in paragraph 12 (j) of the report on the last session (A/AC.105/573). The Committee on the Peaceful Uses of Outer Space had reiterated its recommendation (A/49/20, para. 168) that the Legal Subcommittee, on a permanent basis, should rotate the order of consideration of substantive agenda items. It had, however, endorsed the Subcommittee's recommendation that the order of rotation should be suspended for the 1995 session and that the items should be considered in the same order as in 1994 (items 4, 5 and 3). The Subcommittee had also agreed that less time should be allocated at the current session for the consideration of item 3, than for items 4 and 5. The recommendations and agreements concerning organization of the work of the Subcommittee had been endorsed by the General Assembly in its resolution 49/34.

20. He suggested that, for the current session, the Subcommittee should adopt similar measures to those adopted at the previous session (A/AC.105/573, para. 12), including the provision that delegations should inform the Chair in the course of any given plenary meeting of their intention to speak at the next plenary meeting, so that, if no such announcements of intention were received, that plenary meeting could be cancelled and a Working Group meeting scheduled instead. Another proposed measure was that a decision should be made as early as possible on whether it would be feasible to cancel in advance some of the formal meetings of the Subcommittee and its Working Groups, in order to conduct informal consultations among interested delegations. He proposed that five formal afternoon meetings should not be scheduled and that, instead, informal consultations should be planned. The measures he had just outlined provided for the possibility of the Subcommittee's concluding its session ahead of time. It would be premature to take a decision on that matter now and he suggested that it be examined at a later stage.

21. The implementation of those proposals would, in his view, lead to a better utilization of conference resources and contribute towards ensuring the optimum efficiency of the Subcommittee's work.

22. In response to a question from **Mr. LOUET** (France), he said the proposed provisional schedule of meetings was as set out in the annex to document A/AC.105/C.2/L.196, but that he was proposing it on the understanding that the schedule could be revised at a later stage, particularly with a view to shortening the session, as had been done the year before.

23. **Mr. LOUET** (France) said he was grateful for the Chairman's explanation and could accept that approach.

24. **Mr. de YTURRIAGA** (Spain) asked whether interpretation would be available for the two Working Groups and the informal consultations on working methods.

25. There had been difficulties at the Subcommittee's previous session when the strict application of the speakers' list rule had prevented a number of representatives from speaking on an item at the appropriate time, and he proposed that there should be greater flexibility at the present session so that representatives could speak on any topic as and when they wished.

26. **The CHAIRMAN** said that interpretation would be provided for the Working Groups in all official languages, as in previous years. There would also be interpretation for the informal consultations on working methods and agenda of the Subcommittee, provided that they were held between 10. a.m. and 1 p.m. and between 3 p.m. and 6 p.m., as currently indicated in the schedule of meetings.

27. The purpose of the proposed measure regarding the speakers' list was solely to indicate to the Chairman the need or otherwise for a plenary meeting on a particular item and not to prevent representatives from expressing their views. Representatives would be able to speak on an item when they wished, although an item would not be re-opened once it had been concluded.

28. **Mr. de YTURRIAGA** (Spain) said that the distribution of agenda items in the proposed provisional schedule of meetings gave the impression that the Subcommittee had either too much time or too few items. As it was certainly not going to achieve in a week what it had not managed to achieve in twenty years on the definition question, he proposed that the session should cover only one week, with the larger part of the time being allocated to outer space benefits, and one half-day to working methods.

29. **The CHAIRMAN** said that it would be clearer after the first meeting on working methods how much more time would be needed, but that the time allocated to nuclear power sources could undoubtedly be reduced. He took it that in the absence of further comment the Subcommittee was prepared to approve the measures proposed and the schedule of meetings in document A/AC.105/C.2/L.196, on the understanding that the session would be shortened if possible.

30. *It was so decided.*

GENERAL EXCHANGE OF VIEWS

31. **Mr. HENNESSY** (United Kingdom) said that, while a flexible approach to working methods should allow a significant reduction in the duration of the present session, care should be taken to reduce meetings well in advance of the scheduled date so that more significant savings could be made when the agenda was light. In that connection he agreed that, following the Scientific and Technical Subcommittee's session, there was no need for the Legal Subcommittee to discuss the question of nuclear power sources at the present session. Furthermore, in view of the difficulty of defining a geographical or physical limit to outer space, the functional definition, "space activities", provided the best way of governing what should be covered by space law. The International Telecommunication Union (ITU) was the body that should ensure the rational and equitable use of the geostationary Earth orbit.

32. The United Kingdom was embarking on further space-related projects with developing countries on a bilateral basis as well as in conjunction with other members of the European Space Agency (ESA), and would report on those activities in due course.

33. **Ms. VENTURINI** (Italy) said that, although her delegation believed that no definition or delimitation of air and space existed in international customary law at present and that there was unlikely to be one in the future, the question of the legal regime that should apply to the flight of aerospace objects in different areas of space raised interesting legal problems that might be constructively discussed.

34. Her delegation still believed that the proper forum for the discussion of the rational and equitable use of the geostationary orbit was ITU, which had already taken important measures to ensure equitable access to the geostationary orbit for all countries. Its endeavours should be supported by the ITU member States that were also members of the Subcommittee.

35. The only issue that might require further involvement by the Legal Subcommittee was that of space debris in the geostationary orbit. Significant progress on that issue had been made at the last two sessions of the Scientific and Technical Subcommittee, which her delegation believed would lead to the inclusion of the subject in the agenda of the Legal Subcommittee.

36. As to the legal aspects of the application of the principle that the exploration and utilization of outer space should benefit all States, taking into particular account the needs of the developing countries, she said that Italy was promoting cooperation with developing countries on the use of space technology and its applications. Developing countries would benefit from outer space activities through the sharing of free markets stimulating competitiveness, through participation in international joint ventures and through cooperation in the promotion of foreign investment, which were fields in which Italy had a long-standing and fruitful tradition of bilateral cooperation with developing countries. Italy also participated within the framework of ESA and the European Union in programmes, training courses and workshops organized to strengthen the capabilities of developing countries.

37. The Principles Relevant to the Use of Nuclear Power Sources in Outer Space were now showing their value and had met with general satisfaction, and there was no need for immediate amendments. However, keeping the item on the Subcommittee's agenda would allow it to review and adapt the Principles should the need for revision arise. Her delegation's understanding was that the Legal Subcommittee would await an input by the Scientific and Technical Subcommittee before undertaking any revision.

38. Turning to the working methods of the Legal Subcommittee, she welcomed the flexible approach to the length of the Subcommittee's sessions and would favour the shortening of the session to two weeks, without prejudice to the resumption of three-week sessions in the future depending on circumstances.

39. **Mr. TELLES RIBEIRO** (Brazil) welcomed the previous year's decision to let the question of nuclear power sources in outer space remain with the Scientific and Technical Subcommittee pending new developments. The time saved as a result of that decision might be used to address the other issues on the Subcommittee's agenda or to deal with working methods.

40. The exchange of views that had taken place the previous year on matters relating to the utilization of the geostationary orbit had been stimulating and had provided a basis for further work.

41. In that connection, he congratulated the Secretariat on the organization of the Symposium on Technical and Policy Issues Related to the Use of the Space Environment. Although the question of space debris was being discussed by the Scientific and Technical Subcommittee, his delegation believed that the Legal Subcommittee should also start to address the issue without awaiting the conclusion of the work of the

Scientific and Technical Subcommittee. The United Nations Conference on Environment and Development (UNCED) in 1992 had made the public intensely aware of environmental issues, and that interest was bound to be extended to the outer space environment. It would therefore be better for the Legal Subcommittee to start dealing with the questions concerned now before being overtaken by events.

42. With regard to agenda item 4 on the definition and delimitation of outer space, his delegation still believed that the idea of a questionnaire as a means of advancing discussions was a valid one and could help to promote progress.

43. With regard to agenda item 5 concerning outer space benefits, he hoped that document A/AC.105/C.2/L.182/Rev.2, which his delegation would introduce on behalf of its sponsors, would help the Subcommittee reach consensus on the issue. That document tried to address some of the concerns expressed on the earlier version of the proposal and to reconcile the interests of the developing countries in gaining access to the benefits of the exploration of outer space with the concern of the developed countries regarding the idea of compulsory cooperation mechanisms involving the transfer of technology.

44. With regard to working methods, his delegation agreed with the measures that had been adopted in 1993 to guarantee the effective utilization of United Nations services, but would oppose any attempts simply to reduce the duration of the session without fully addressing issues that were of importance for many members. Moreover, his delegation's understanding was that any decision to reduce the duration of the session would be taken only on an ad hoc basis.

45. Now that matters relating to nuclear power sources would be absorbing less of the Subcommittee's time, the question of additional items for inclusion in the agenda needed to be addressed. If the Subcommittee made good progress on its agenda, he suggested that the time saved should be used to discuss at length the inclusion of future items. In view of the long list of suggestions for possible additional agenda items, the three meetings reserved for those discussions might not be enough. Possible subjects for consideration included space debris and the question of the commercialization of outer space, with its vast array of legal implications.

46. **Mr. de YTURRIAGA** (Spain) said that greater progress might be made during the session if the Subcommittee were to consider the development of international space coooperation rather than the vexed question of definition, which would best be set aside for the time being.

47. The working paper (A/AC.105/C.2/L.182/Rev.2) proposing principles for international cooperation submitted by a number of countries was welcome and would probably be the main topic for discussion at the present session. The suggestion made at the previous session that a parallel might be drawn with the Convention on the Law of the Sea, with outer space being regarded as a common heritage, was a useful one for purposes of discussion provided that the differences between the topics were also given careful consideration. Some principles, such as that of the freedom of communications for all mankind, needed separate discussion, as did the question of space debris, which should be placed on the agenda of the Legal Subcommittee as well as being considered by the Scientific and Technical Subcommittee.

48. The question of working methods should have been made a separate agenda item for discussion in the plenary, rather than being treated as a matter for informal consultations, bearing in mind that the general problems of procedure were of interest to the Committee and the two Subcommittees and not to the Legal Subcommittee alone. The lack of progress in recent years called for changes in working methods, particularly

simplification and flexibility of proceedings and better use of time, and even changes in the membership of the three bodies.

49. It was particularly important to ensure that documents were issued and disributed in good time in all working languages. The notorious delays in the distribution of language versions other than English and lack of interpretation in smaller and informal meetings meant that non-English speakers were discriminated against.

50. **Mr. REY CORDOBA** (Colombia) observed that representatives who originally had not intended to take part in a discussion were often stimulated to do so by others' remarks. The schedule of meetings should therefore be treated as provisional, allowing for discussions to continue where necessary and for the taking up of new subjects.

51. If the Subcommittee did not discuss nuclear power sources, the session could be reduced. However, that point could be discussed later.

52. Progress had in fact been made in recent years on agenda items 4 and 5, and some delegations had modified their positions. He therefore believed that continued discussion of those items would be worth while.

53. **Mr. SÖLENDIL** (Turkey) agreed that a flexible approach should be adopted to the Subcommittee s working methods so that the time available could be used as effectively as possible.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (A/AC.105/573 and A/AC.105/605; A/49/20)

54. **The CHAIRMAN** drew attention to the report of the Subcommittee on its thirty-third session (A/AC.105/573). The report of the Chairman of the Working Group on the relevant agenda item was contained in annex II of that report.

55. The work of the Legal Subcommittee on the definition of outer space and the geostationary orbit had been reviewed by its parent body, the Committee on the Peaceful Uses of Outer Space, at its last session (document A/49/20).

56. The question of the examination of the physical nature of technical attributes of the geostationary orbit had been considered by the Scientific and Technical Subcommittee at its session in February 1995 (see document A/AC.105/605).

57. In resolution 49/34, the General Assembly had recommended that at its present session the Subcommittee, taking into account the concerns of all countries, particularly those of developing countries, should continue its consideration of the item through the relevant working group.

The meeting rose at 5.10 p.m.